

UNITED STATES PATENT AND TRADEMARK OFFICE
ANTI-HARASSMENT POLICY AND COMPLAINT PROCEDURE
Agency Administrative Order 202-955

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ANTI-HARASSMENT POLICY AND COMPLAINT PROCEDURE

I. PURPOSE

The purpose of this Agency Administrative Order (AAO) is to provide guidance on allegations of harassment prohibited by Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.*, the Equal Pay Act of 1963, as amended, 29 U.S.C. § 206(d) *et seq.*, the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 621 *et seq.*, Section 501 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 791 *et seq.*, the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended, 38 U.S.C. § 4301 *et seq.*, and the Genetic Information Nondiscrimination Act of 2008 (GINA), 42 U.S.C. § 2000ff *et seq.* These statutes prohibit, among other things, harassment based on sex, race, color, national origin, age, religion, disability, service in the uniformed services, genetic information, or reprisal. In addition, pursuant to Executive Order 11478, as amended by Executive Orders 12106 and 13087 (collectively, the Executive Order); the Executive Memorandum of June 17, 2009; and 5 U.S.C. § 2302 of the Civil Service Reform Act of 1978, as amended, these procedures are also applicable to allegations of harassment based on sexual orientation, gender identity and/or expression, marital status, and/or political affiliation.

Prohibited harassment targeted at any individual or group will not be tolerated by the United States Patent and Trademark Office (USPTO or Agency). Similarly, employees must feel free to report such conduct without fear of retaliation. This AAO provides expedited, effective procedures to encourage employees to come forward with prohibited harassment allegations. The procedures established in this AAO are distinct from the equal employment opportunity (EEO) programs of the USPTO. This AAO provides an expedited process for reviewing allegations of prohibited harassment, stopping further incidents of prohibited harassment, and taking appropriate corrective action against employees found to have engaged in prohibited harassment, up to and including removal from Federal service. The EEO complaint process, which is administered by the USPTO's Office of Equal Employment Opportunity and Diversity ("OEEOD") and separate from the procedures described in this AAO, follows the governing Equal Employment Opportunity Commission (EEOC) regulations.

II. BACKGROUND

The USPTO is responsible for maintaining a workplace free of prohibited harassment. As part of this responsibility, supervisors and managers are responsible for addressing and correcting employee misconduct. Prohibited harassment should be immediately addressed and corrected by an appropriate authority within the USPTO.

The allegations or incidents covered in this AAO are such that immediate, appropriate action by the manager or supervisor to resolve such matters is mandatory without regard to which forum, if any, an employee selects in pursuing an allegation. Employees have recourse to several forums when they believe that their supervisor has not effectively

addressed such allegations. Failure of managers and supervisors to address allegations of prohibited harassment can result in serious consequences for the USPTO.

III. SCOPE

A. Prohibited Conduct

This AAO covers incidents or allegations of misconduct involving harassment prohibited by Federal law or Executive Order, whether ongoing or completed. Prohibited harassment includes conduct by supervisors, non-supervisors, and contractors who have access to USPTO's workplace. Prohibited harassment can be verbal, visual, or physical conduct that denigrates or shows hostility or aversion toward an individual because of his/her membership in a protected group or because of his/her association with someone because that individual is a member of a protected group. Harassing conduct includes, but is not limited to, insults, slurs or threatening, intimidating or hostile acts. Note that electronic communications of any kind are covered by this AAO. This includes forwarding or disseminating any electronic information which contains, in whole or in part, any harassing content, regardless of whether the employee is the author or creator of the content.

This AAO covers:

- Conduct targeting an employee, based on his or her membership in a protected class that results in a tangible employment action; and
- Conduct directed at an employee because of his or her membership in a protected class that results in a hostile work environment. A hostile environment exists when: (1) the employee is a member of a protected class, (2) the employee was subjected to unwelcome verbal or physical conduct on the basis of his/her membership in that class, (3) the harassment complained of was based on his/her membership in that class, (4) the harassment had the purpose or effect of unreasonably interfering with his/her work performance and/or creating an intimidating, hostile, or offensive work environment, and (5) there is a basis for imputing liability to the employer. To constitute a hostile work environment, the alleged harassing conduct also must be both objectively and subjectively offensive, creating an environment that a reasonable person would find hostile or abusive and one that the victim perceived to be so. The conduct also must be sufficiently severe or pervasive to alter the conditions of the complainant's employment and create an abusive work environment.

B. Extent of Prohibited Conduct

The conduct covered by this AAO involves both:

- A pattern of pervasive harassment in the work unit, including unwelcome behavior towards an individual or individuals because of their protected status, which has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment; and
- A single incident of prohibited harassment because of his/her protected status, which is of such a serious nature that the continued effective functioning of the unit will be impacted.

C. A Separate Note On Sexual Harassment

It is important to note that prohibited sexual harassment can occur between members of the same sex as well as members of the opposite sex, and that the sexuality of the harasser and/or the victim is not necessarily relevant to a determination of whether there was prohibited sexual harassment. Prohibited sexual harassment occurs when unwelcome sexual advances, requests for sexual favors or other physical or verbal conduct of a sexual nature are made under the following circumstances: (1) when submission to a sexual advance is a term or condition of employment; (2) when submission to or rejection of sexual advances is used as a basis for personnel decisions; or (3) when conduct unreasonably interferes with work performance or creates an intimidating, hostile, or offensive work environment.

IV. PROCEDURES

A. Employee Responsibility For Reporting Allegations of Prohibited Harassment

- Employees are strongly encouraged to report any incident they perceive to be prohibited harassment, to include both incidents personally experienced, and those reported to them and/or witnessed by them. As soon as the incident occurs, employees may either report it to their first- or second-level supervisor, or to Employee Relations (ER).
- To the extent possible, the USPTO will protect the confidentiality of employees who report prohibited harassment. However, the USPTO cannot guarantee complete confidentiality, because it cannot conduct an effective inquiry without revealing certain information to the alleged harasser and potential witnesses. The USPTO will share allegations of prohibited harassment only with those who have a need to know.
- Employees who make reports of prohibited harassment or provide information related to such reports will be protected from retaliation.

All reports of prohibited harassment when reported to or received by ER will be promptly evaluated by ER to determine if they are within the scope of this AAO and whether the prohibited harassment alleged has been previously investigated.

Those reports which fall within the scope of this AAO will be thoroughly and impartially reviewed in accordance with the procedures in section E of this AAO. Complaints outside the scope of this AAO or that have been previously investigated will not be investigated pursuant to these procedures, but ER may still take appropriate action regarding reported misconduct, even if it does not meet this AAO's definition of prohibited harassment. If it is determined that a report falls outside the scope of this AAO or that a report has been previously investigated, that determination will be appropriately documented by ER.

B. Management's Responsibility For Reporting Allegations of Prohibited Harassment

- A manager or supervisor who receives an allegation of prohibited harassment from an employee must immediately report the allegation to the ER Division Chief. Failure by the manager or supervisor to report the allegation could result in corrective action for failure to adhere to the provisions of this AAO.
- In some instances, an employee may request that a manager or supervisor keep the employee's allegations of prohibited harassment confidential. In such instances, however, the manager or supervisor is obligated to inform the ER Division Chief of the allegations. The responsible manager or supervisor must also inform the employee that the Agency cannot guarantee complete confidentiality because it has an affirmative duty to prevent and correct prohibited harassment.

C. Incidents Where Facts Are Known and Not in Dispute

Employees may allege, or managers and supervisors may become aware of, incidents of prohibited harassment where the facts are not in dispute, *i.e.*, where all parties admit that the allegations are true. In such situations, appropriate corrective action, including but not limited to stopping any ongoing, prohibited harassment, should be taken immediately in consultation with the ER Division and the Office of General Law ("OGL").

D. Incidents Where Facts Are in Dispute

Whenever an allegation of prohibited harassment has been made, the responsible manager or supervisor must report it to the ER Division Chief. Where appropriate, the ER Chief will select someone to conduct an inquiry. ER will provide advice and assistance and, where appropriate, conduct an inquiry. At the Agency's discretion and in appropriate circumstances, interim measures may be taken during the inquiry.

E. Procedures for Conducting an Inquiry

Any inquiry must result in a record sufficient to support a corrective action to be taken or must indicate that there is insufficient evidence to support corrective action.

- The person selected to perform the inquiry shall take signed, sworn statements from the employee who has alleged prohibited harassment, from the employee against whom the allegations are made and from any appropriate witnesses.
- The person conducting the inquiry is responsible for ensuring that all labor relations obligations are met in conducting the inquiry.
- The following process should be followed in the course of the inquiry:
 - Confirm the name, position and supervisory chain of the employee;
 - Identify the alleged misconduct and the names of those parties allegedly responsible for the conduct;
 - Obtain from the employee a description of the alleged actions/comments, the dates, times and locations of the alleged actions/comments, as well as the names of any witnesses to, or persons with knowledge of the alleged actions/comments;
 - With regard to allegations of prohibited sexual harassment, determine specifically whether the employee is claiming that someone has made and/or carried out any threats or promises regarding the employee's terms and conditions of employment or taken a personnel action in relation to the harassing conduct;
 - Obtain from those accused of the alleged misconduct a detailed response to each of the employee's allegations, as well as the names of witnesses who can corroborate the accused's account of events;
 - Obtain statements from witnesses to any of the incidents described by the employee alleging prohibited harassment and the employee accused of misconduct;
 - Inform all interviewees that they should refrain from discussing their statements with others;
 - Inform all interviewees about the prohibition forbidding retaliation against the employee who reported the alleged prohibited harassment;

- When the ER inquiry is completed, any findings must be reviewed by OGL for legal sufficiency;
- After the legal sufficiency review by OGL, any findings should be shared with the appropriate management officials in the business units;
- Corrective action will be taken as appropriate.
- After completion of the inquiry, the complaining employee will be notified: (1) that the inquiry has been completed; and (2) that the Agency took appropriate action.
- In any situation involving disclosure of the findings of the harassment inquiry, ER will consult with the Office of General Law before disclosure.

F. Where an Inquiry Results in a Finding that Misconduct Has Occurred

In such situations, corrective action, including but not limited to stopping any ongoing prohibited harassment, shall be immediately taken. ER shall maintain a record of all inquiries conducted in accordance with this Order which result in disciplinary action. This record shall be maintained in the appropriate ER case file in accordance with established guidelines. This requirement does not affect any other recordkeeping requirements that may apply to inquiries conducted in accordance with this Order.

V. REPORTING TO THE OFFICE OF INSPECTOR GENERAL

USPTO officials and employees are not required to report evidence of individual prohibited harassment to the Office of Inspector General (“OIG”). If, however, ER determines there is evidence of a pattern of prohibited harassment discrimination within the USPTO, that evidence should be reported by ER to the OIG in accordance with DAO 207-10, “Inspector General Investigations.” Reporting evidence of a pattern of prohibited harassment to the OIG does not relieve the USPTO of its obligations to identify and correct the situation. In appropriate cases, the OIG will advise the USPTO if the USPTO proposed actions could interfere with OIG proceedings.

VI. EEO COUNSELING AND FORMAL EEO COMPLAINTS

An employee or applicant for employment who believes that he or she has been discriminated against, including unlawful harassment, on a protected basis, must contact OEEOD within 45 days of the alleged discriminatory event or action to file a complaint. If an employee or applicant raises issues of prohibited harassment during the informal counseling period, OEEOD will notify the ER Chief, who will follow the procedures in this AAO, including conducting an inquiry where appropriate. OEEOD’s EEO Counselor is not authorized to conduct inquiries into employee misconduct but will

conduct limited fact-finding for the purpose of informally resolving the matter. The EEO Counselor, with the consent of the employee, may extend the informal EEO counseling process for an additional 30 (or 60) days. If the counselee does not grant an extension, then the counseling window is only 30 days.

Where an employee files a formal EEO complaint regarding prohibited harassment, a copy of any inquiry completed by the USPTO, pursuant to this AAO, must be included by the OEEOD in the EEO Report of Investigation. In that regard, any time a formal EEO complaint regarding prohibited harassment is filed, OEEOD should contact the Chief of ER to determine if the USPTO has conducted an inquiry pursuant to this AAO.

- EEO complaints are filed against the USPTO. Accordingly, the matter to be decided when complaints of prohibited harassment are adjudicated is whether the USPTO acted properly in maintaining a workplace free of prohibited harassment. In almost all instances, the appropriate manager or supervisor will be informed of the allegation(s) either directly by the aggrieved employee or by an EEO Counselor, during the EEO process. The USPTO officials who are put on notice of allegations of prohibited harassment are responsible for acting in accordance with the requirements of this AAO and for ensuring that no person is subject to retaliation for opposing any practice made unlawful under Federal anti-discrimination laws or for participating in any proceeding under these statutes.

VII. EFFECT ON USPTO POLICY ON ANTI-HARASSMENT

This Amended AAO supersedes the USPTO Policy Statement on Prohibited Harassment in the Workplace, dated December 5, 2000, and Agency Administrative Order 202-955, dated November 21, 2009.

ISSUED BY:

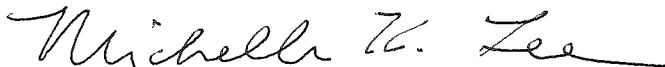


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12/22/2014

Date

OFFICES OF PRIMARY INTEREST: Office of Equal Employment Opportunity and
Diversity/Office of Human Resources/Office of General Counsel